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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

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UNITED STATES OF AMERICA

v.

IAN FREEMAN

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1:21-cr-41-JL

September 11, 2023

10:38 a.m.

TRANSCRIPT OF SENTENCING HEARING

DAY 1

BEFORE THE HONORABLE JOSEPH N. LAPLANTE

Appearances:

For the Government:

Georgiana L. MacDonald, AUSA
Seth R. Aframe, AUSA
John J. Kennedy, AUSA
United States Attorney's Office

For the Defendant:

Mark L. Sisti, Esq.
Sisti Law Offices

Richard Guerriero
Lothstein Guerriero PLLC

Probation Officer:

Sean Buckley

Court Reporter:

Liza W. Dubois, RMR, CRR
Official Court Reporter
United States District Court
55 Pleasant Street
Concord, New Hampshire 03301
(603)225-1442

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1 P R O C E E D I N G S

2 THE CLERK: Court is now in session, has before it
3 for consideration sentencing hearing in criminal case
4 21-cr-41-01-JL, United States vs. Ian Freeman.

5 THE COURT: All right. We're here for Mr. Freeman's
6 sentencing hearing after a jury trial.

7 Mr. Freeman is here represented by his counsel and
8 there are three federal prosecutors also present in the
9 building -- I mean in the courtroom.

10 And we have a couple of motions that were filed
11 very recently by the defendant that we should take up as a
12 preliminary matter. They were caused by the -- the Court
13 dismissed one of the counts under Rule 29 of the Federal Rules
14 of Criminal Procedure finding that -- in a very close call, but
15 finding that the evidence to support the substantive money
16 laundering count was insufficient to support the conviction, so
17 the Court vacated that guilty verdict and dismissed the count.

18 That led to a motion for a new trial based on
19 spillover prejudice by the defense and the -- and the defense
20 also filed a motion to reconsider the Court's denial of its
21 motion to dismiss the counts involving running a money
22 transmitting business under the theory that the Bitcoin
23 involved in the case did not constitute funds under the
24 applicable federal statutes.

25 So let's -- let's address those motions first

1 because, of course, if I reconsidered that, it would be a
2 different sentencing and if I granted the motion for a new
3 trial, there would be no sentencing at all. So we should -- we
4 should address these first.

5 MR. GUERRIERO: Okay, your Honor. Thank you.
6 Richard Guerriero for Mr. Freeman.

7 We're going to submit the merits of those motions on
8 the pleadings on -- we've made our record. We think our
9 arguments are quite clear.

10 THE COURT: Yup.

11 MR. GUERRIERO: I did want to address the issue of
12 timeliness which the government raised on each motion and
13 that's not addressed in our pleadings.

14 On the motion for a new trial, the Court had a
15 status conference in which your Honor said that you were going
16 to be granting the -- the Rule 29 motion in part as to the
17 money laundering charge.

18 At that time, Attorney Sisti said, well, then, I'm
19 likely going to be moving for a new trial. And my recollection
20 is that -- it was before I was counsel on the case, but I did
21 attend that status hearing online. My recollection is that the
22 Court said, what's your argument, and Attorney Sisti responded,
23 I have to see the order.

24 So I think everyone, the Court and the government,
25 was on notice at that point that we would file a motion for a

1 new trial, but we needed to see the written order.

2 The written order came out. It's Document 332. It
3 came out on August 22nd and we filed a motion for new trial
4 within 14 days after that. I think under the applicable Rules
5 of Criminal Procedure and the local rules, 14 days was timely.

6 With regard to the motion to reconsider, the
7 government also raised a timeliness issue and you described the
8 memorandum order earlier as addressing the motion for new
9 trial, but it also contained the written order denying the
10 motion to dismiss the unlawful money transmitting counts.

11 Your Honor had given reasons on the record back a
12 long time ago by all accounts, a year ago, when I had filed the
13 motion in a different proceeding, and you gave oral reasons on
14 the record, but then you addressed that motion in writing and
15 you said you would write an order later to address that motion
16 in writing.

17 So in order to make sure we preserved our arguments
18 regarding the motion to dismiss, we also filed within 14 days a
19 motion to reconsider that order on the motion to dismiss the
20 unlicensed money transmitting business counts. That, likewise,
21 we believe, was timely. It was filed within 14 days of the
22 Court's written order.

23 The fact that the Court may have given people a --
24 you know, the courtesy of a notice that the order was coming,
25 that's not the same as the analysis. Our motion to reconsider

1 is quite detailed. It addresses the analysis in the Court's
2 written order which, you know, we had the Court's reasons at
3 the time of the oral order, but we didn't have the full-scale,
4 broken-down legal analysis in the written order, so that's why
5 we filed a motion to reconsider.

6 THE COURT: Thank you.

7 MR. GUERRIERO: Thank you.

8 THE COURT: Timeliness?

9 MR. AFRAME: On timeliness, as to the spillover
10 argument, Rule 33 says any motion for a new trial grounded on
11 any reason other than newly discovered evidence, which this was
12 not, must be filed within 14 days after verdict or finding of
13 guilty.

14 If you go down to the 2005 commentary note
15 amendment, it describes a procedure where the defendant must
16 file within that 14 days but can then seek extension of time to
17 actually file and the Court can rule well beyond that period.

18 THE COURT: Yeah.

19 MR. AFRAME: So there's a technical matter and it's
20 in the footnote in the government's pleading --

21 THE COURT: Yeah.

22 MR. AFRAME: -- but it definitely says the Court can
23 do what it wants if the defendant establishes excusable
24 neglect.

25 But since Mr. Guerriero talked about it, I think the

1 right procedure is the Rule 29 is filed and you file a -- a
2 Rule 33 motion and say if the Court grants a Rule 29, then I
3 want 14 days from after that to actually write my spillover
4 brief.

5 But something needs to happen within 14 days of the
6 entry of the verdict or finding of guilty. Nothing happened
7 within that time. I acknowledge that the commentary note says
8 the Court can excuse that failure, but I do think it was a
9 failure.

10 THE COURT: All right. And that's with respect to
11 the motion for -- I'm a little bit confused.

12 MR. AFRAME: Sorry.

13 THE COURT: I understand the argument vis-a-vis the
14 new trial motion.

15 MR. AFRAME: That was that.

16 THE COURT: What about the motion to reconsider?

17 MR. AFRAME: So there is no -- first of all, there
18 is no rule of criminal procedure that allows reconsideration.
19 So the First Circuit has said that there's sort of an inherent
20 power in the Court to do that.

21 So I would say it's -- this is more in sort of a
22 laches kind of argument, that the -- the Court set forth in
23 November what the rationale was. I didn't see any material
24 difference in the written order from what the Court said in
25 November. I don't think there was an expectation in November

1 there would be a written order and there was no motion to
2 reconsider. And then on the eve of trial, I'm sorry, of
3 sentencing, a motion to reconsider is filed.

4 My point was just sort of as a matter of sort of
5 sitting on your rights, and this is an extraordinary leave to
6 begin with, that that was -- that was too late. But there --
7 I cannot point you to a rule because there is no rule that
8 even --

9 THE COURT: We have a local rule on motion to
10 reconsider, though.

11 MR. AFRAME: I don't think it applies to criminal.

12 THE COURT: It doesn't apply to criminal?

13 MR. AFRAME: Not to criminal, I don't think.

14 THE COURT: There's that list of rules that also --
15 can I have that? Does he have a copy?

16 There's that list of rules that also apply to
17 criminal --

18 MR. KENNEDY: We can cross-reference --

19 THE COURT: Is it covered?

20 MR. KENNEDY: I think the criminal does cross --
21 like it mentions the civil rule, but I think with a list of a
22 bunch of rules.

23 MR. GUERRIERO: It's 7.2(d), your Honor.

24 THE COURT: Okay. Okay. Motions for
25 reconsideration. Okay. Yeah, that's the motion for

1 reconsideration.

2 I was looking for the rule about which -- which
3 rules apply to criminal cases and whether 7.2 was covered.

4 Kellie, are you familiar with that rule? It's like
5 a laundry list of rules.

6 THE CLERK: Is there -- I'll look it up. I know
7 they have the --

8 THE COURT: It never -- it doesn't usually become an
9 issue, but --

10 THE CLERK: Right.

11 THE COURT: -- that's why nobody's really ...

12 MR. GUERRIERO: I believe your Honor may be
13 referring to 1.1(d), your Honor.

14 THE COURT: Could be.

15 MR. GUERRIERO: And I have to say this specifically
16 excludes Civil Rule 7.2(d).

17 THE COURT: So it doesn't apply.

18 All right. Look. Okay. Anything else you want to
19 say?

20 MR. AFRAME: On timeliness, no.

21 THE COURT: What about merits?

22 MR. AFRAME: So on the merits, when it comes to
23 spillover, the standard that the defendant would need to
24 establish is a high one.

25 The First Circuit has articulated that there must

1 be -- that the joinder of offenses must compromise a specific
2 trial right or prevent the jury from making a reliable judgment
3 about guilt or innocence such that a miscarriage of justice
4 looms.

5 Our point is we're not close to that. The evidence
6 regarding -- first of all, the judge -- the Court's ruling on
7 the Rule 29 was on the narrow question of whether there was
8 sufficient evidence that Mr. Freeman knew of the transaction.
9 But all of the evidence otherwise, other than the sort of
10 last-day, was there a transaction, were statements by
11 Mr. Freeman made to the undercover during the time period
12 covered by the conspiracy that go to all the questions of how
13 he ran his business, what he knew, what he understood, what he
14 used his kiosks for, that he understood elderly people were
15 using them to send money.

16 All of this was evidence that, yes, it related to
17 the substantive money laundering count, but it was equally
18 admissible to the conspiracy count and it was certainly
19 admissible as nonhearsay under 8-0 -- 801(d)(2)(A), and so I
20 don't see how Mr. Freeman was prejudiced from the -- in any way
21 from the admission of that evidence because I think it would
22 have been admissible anyway.

23 THE COURT: Right. What about on the motion for
24 reconsideration?

25 MR. AFRAME: I just don't --

1 THE COURT: If you want to address the merits.

2 MR. AFRAME: Yeah. So the merits, I mean, I would
3 just say, I mean, it's a -- as I sort of said, it's sort of a
4 good appellate brief in the sense that it makes some arguments,
5 but the standard is -- for a motion to reconsider is a very,
6 very high one. It would need a showing of newly discovered
7 evidence, an intervening change in the law where the original
8 decision was based on a mere -- a manifest error law was
9 clearly unjust.

10 There's just none of that here. The -- there are
11 arguments. There are always arguments. But reconsideration
12 isn't the place to rehash the arguments that we already made
13 and resolved. There is a place to make those arguments and
14 that will come, but this isn't -- based on what this read like,
15 it wasn't a motion to reconsideration because the -- there was
16 no -- even if those arguments end up being right at the end of
17 the day, they were not a manifest error of law or clearly
18 unjust. So I do not think reconsideration is the appropriate
19 vehicle for bringing them forward.

20 THE COURT: Yeah. Is it fair to say -- I mean, I --
21 the motion for reconsideration seems more like just a motion
22 to, I don't know, preserve arguments for appeal. I mean, you
23 don't really argue that the Court made a manifest error of fact
24 or law, do you?

25 MR. GUERRIERO: We don't argue that the Court made

1 an error of facts in the sense of like a witness testified --
2 there were no witnesses on this. It's really a legal --

3 THE COURT: Yeah.

4 MR. GUERRIERO: It's really a legal issue.

5 There are some facts of which the Court -- I guess
6 we asked the Court to take general notice. For example, the
7 size of the Bitcoin industry in the world economy --

8 THE COURT: Yeah.

9 MR. GUERRIERO: -- that's more of a matter of
10 opinion. There's plenty of authority cited by both sides and
11 your Honor, you know, made a finding on that. But other than
12 that, there aren't factual issues. It's a question of a legal
13 issue.

14 The reason it was necessary for us to file that
15 motion is that when we read the written order on August 22nd,
16 we saw that there were arguments that we wanted to make sure
17 that, as you say, we preserved and put on the record exactly
18 what our legal arguments were.

19 It did appear that, respectfully, in disagreeing
20 with us, the Court may have misunderstood our legal arguments.
21 Maybe it simply disagreed for good reasons. We'll find out on
22 appeal. But in order to make the record clear, we needed to
23 put those on the record.

24 THE COURT: All right. I think both -- I think
25 both -- I think both motions are untimely, but the -- the

1 motion for reconsideration is -- there's an argument -- the
2 argument for the untimeliness of the motion for reconsideration
3 is much better than it is for the motion for new trial. The --
4 there was an order on the motion to dismiss and although it was
5 memorialized -- memorialized in that same order that came out
6 in August of this year, the order had been issued long, long
7 ago and there's really no reason a motion for reconsideration
8 should be filed, you know, so many months later. So that's --
9 the motion for reconsideration is clearly untimely.

10 It also -- but in addition to the untimeliness, it
11 also fails on the merits. It rehashes some old arguments and
12 it introduces -- and it makes some new ones. And introducing
13 new arguments is impermissible in a motion for reconsideration.
14 I'll address -- I'll address those on the merits as well, but
15 they're not properly advanced in a motion for reconsideration.

16 The basic argument, of course, the basic thrust of
17 the argument, was that Mr. Freeman argued that since virtual
18 currency did not exist in 2001 when the applicable statute was
19 enacted, Congress could not have intended to authorize the
20 regulation of virtual currency like Bitcoin when it passed
21 Section 5330 in 2001. It's sort of a plain meaning of funds
22 argument that the defense has advanced here.

23 And this case that -- the case that the defendant's
24 relying on, *Wisconsin Central Ltd. vs. United States*, I think
25 it -- I think it actually supports the Court's interpretation

1 of the word funds in the statute.

2 In *Wisconsin Central* -- by the way, the citation for
3 that, 138 S. Ct. 267, I'm sorry, 2067, 138 Supreme Court 2067.
4 That's a 2018 case. But in that *Wisconsin Central* case, the
5 Supreme Court interpreted the meaning of money in the Railroad
6 Retirement Tax Act of 1937. The majority held, the Court
7 ruled, that, quote: While every statute's meaning is fixed at
8 the time of enactment, new applications may arise in light of
9 changes in the world. So money, as used in that statute, must
10 always mean a medium of exchange and what qualifies as a medium
11 of exchange may depend on the facts of the day.

12 In other words, that can change over time.

13 Another -- another sort of very well known example
14 of this idea is the very famous *Bostock* case where the parties
15 acknowledged that in Title VII of the Civil Rights Act
16 pertaining to employment, it was not Congress's intent to
17 subject the workplace or to prohibit discrimination based on
18 sexual orientation or sexual identity and the Supreme Court
19 ruled that despite that that wasn't intended in the early 1960s
20 when the act was enacted, the meaning of the world sex
21 nonetheless includes sexual orientation, sexual identity.

22 And that's another sort of very clear example that
23 at least from this Court's perspective, legislative intent
24 doesn't really control these issues; the meaning of words
25 control these issues. And that can change over time. So the

1 Court continues to reject that on the merits.

2 There's a couple of new arguments that were advanced
3 in this motion for reconsideration. They're based on the --
4 some of them are based on the premise that the phrase, quote,
5 valued as substitute for currency in reference to virtual
6 currency -- that's in Section 5330 -- that Congress, therefore,
7 did not support the expansion of FinCEN's -- FinCEN is
8 F-i-n-C-E-N -- FinCEN's regulatory authority for -- for the
9 period. And this language is included in several bills in 2018
10 and 2019, which were considered and rejected.

11 Now, the defendant doesn't elaborate on the reasons
12 that these bills were rejected and whether the fate of the
13 bills was in any way connected with the phrase at issue here,
14 again, value that substitutes for currency.

15 The defendant also invokes the canon against
16 surplusage to argue that if funds included virtual currency,
17 there wouldn't have been any need for the amendment, the added
18 phrase, quote, value that substitutes for currency, in Section
19 5330.

20 The First Circuit's case, *City of Providence vs.*
21 *Barr*, 954 F.3d. 23, it's a 2020 case, First Circuit, quote:
22 Although we aspire to give statutory language more than
23 illustrative function when the plain meaning of the text
24 admits, we recognize that sometimes Congress may consider a
25 specific point important or uncertain enough to justify a

1 modicum of redundancy.

2 Quoting the *Mass Association of HMOs* case, that's at
3 194 F.3d. 176, a circuit case from 1999. Continuing, the Court
4 said: The canon against surplusage is not a straitjacket. It
5 should not, therefore, be employed inflexibly to rule out
6 even -- to rule out every interpretation of a statute that
7 treats certain language as illustrative or clarifying.

8 The other point is, look, these arguments could have
9 been raised in the original motion and they were not raised and
10 a motion for reconsideration is not the proper vehicle for
11 presenting new theories in favor of dispositive motion
12 practice.

13 A party has the duty to incorporate all relevant
14 arguments in the papers that directly address the pending
15 motion. That's the *Hudson* case, *Hudson vs. Town of Weare*,
16 quoting circuit authority, *Rocafort vs. IBM Corp.*, 334 F.3d
17 115, a 2003 case.

18 Now, the defendant also argues in the motion to
19 dismiss that Counts One and Two should have been dismissed
20 because they rely on FinCEN's 2013 interpretive guidance as
21 opposed to the statute, which Mr. Freeman argues is invalid
22 under the major questions doctrine.

23 I addressed how I read the major questions doctrine
24 in the written order. I held that the regulations promulgated
25 under Section 5330 and FinCEN's interpretations of them were --

1 "have no bearing on whether the defendant violated section
2 1960," the money laundering statute, in Counts One and Two.
3 That's document number 332, page 14, note 24.

4 And what I tried to explain in that order was that
5 Mr. Freeman was charged with failing to register the money
6 transmitting business, a requirement in Section 5330, and he
7 was not charged with violating the regulations. By example,
8 you know, "failing to follow the required form and manner of
9 registration under the regs."

10 That's in the same order.

11 I also ordered, "The indictment neither depends on
12 nor references the FinCEN guidance and the only agency arguably
13 interpreting Section 1960 for purposes of this prosecution is
14 the Department of Justice, not FinCEN."

15 The language of those statutes is ambiguous, but
16 they covered Mr. Freeman's conduct and the prosecution could --
17 could have met its burden of proof for a violation of Section
18 1960 by relying on the statutes alone. So there's no need to
19 look to the FinCEN guidance, the interpretive guidance, on
20 those regs.

21 I also -- I -- I should note here, correct me if I'm
22 wrong, I don't remember an instruction for the -- to seek jury
23 unanimity on a violation of the statute as opposed to the
24 guidance. And so there's no reason whatsoever, no record of
25 any reason, why the jury shouldn't be assumed to have

1 unanimously found a violation of the statute.

2 Now, Mr. Freeman's argued in response, though, that
3 he couldn't have satisfied Section 5330's registration
4 requirements without complying with the regulation's
5 prescribing form and manner as well as the contents of the
6 registration.

7 He points out some of Mr. Vlahakis -- is it
8 Vlahakis -- Mr. Vlahakis's testimony, that's V-l-a-h-a-k-i-s,
9 regarding registration requirements at the trial and he also
10 argues, Mr. Freeman argues, that at various points during the
11 trial the prosecution referred to his failure to file as well
12 as his failure to complete the other tasks required of a money
13 transmitter, as if the two are linked, implying, I guess, that
14 the latter, form and manner, proves the former, failure to
15 register. And the bottom line is that Mr. -- what
16 Mr. Freeman's arguing is here is that registration required
17 adherence to the regs.

18 But it doesn't persuade the Court. The Court
19 thought about it, but the Court's holding was that the
20 prosecution proved that the defendant failed to register a
21 money transmitting business and that by doing so, he violated
22 Section 5330, the registration requirement. So even if it
23 follows that he also failed to comply with the related regs, it
24 doesn't affect the Court's conclusion that the prosecution
25 could have and did prove its case by relying on the statutes

1 alone.

2 In terms of these other statements purportedly made
3 by the prosecution linking the failure to file with the form
4 and manner of registration, I don't think those were argued in
5 the Rule 29 motion at all. They don't -- they didn't seem to
6 be important at the time of that filing or focused on during
7 the trial at all and, like I said, there was no request for a
8 jury finding one way or the other so it could have -- so
9 diminution could be shown as to one or the other or both.

10 Nothing in the motion to reconsider challenges or
11 disturbs this Court's analysis and conclusions with regard to
12 the major questions doctrine. I don't think this is a major
13 questions doctrine issue, but if I'm wrong about that, the
14 circuit court will tell us.

15 Finally, this argument advanced on the motion for
16 reconsideration, it's just basically a disagreement with the
17 Court's holding in footnote 24. And it -- this argument
18 focuses on Section 1950(b)(1)(B) and doesn't relate or affect
19 the other theories of conviction in the case, especially
20 1960(b)(1)(C), and it doesn't relate to or affect the other
21 theories of -- like I said, it doesn't -- it doesn't relate to
22 the (C) -- (b)(1)(C), focuses only on (b)(1)(B). And that's
23 what makes it a crime to operate the money transmitting
24 business that includes the transmission of funds that the
25 defendant knew to be derived from a criminal offense.

1 Let's all -- look, there's also just the point that
2 there's just no -- there's no support for this argument. I
3 mean, as the Court pointed out in its order, there's near
4 unanimity. The only -- I think the only case we could find in
5 our research that adopted this theory about the statutory
6 definition not covering Bitcoin, getting back to the general
7 argument, was a U.S. magistrate judge opinion that hadn't even
8 been adopted by the district court. There's just no authority
9 for this argument that's being advanced. It doesn't mean there
10 couldn't be authority at some point, I recognize that, but I'm
11 bound by circuit authority and when I'm not -- when I don't
12 have circuit authority, I rely on persuasive authority from
13 other courts. And all the authority favors the prosecution's
14 position and argument with respect to this issue, so the motion
15 for reconsideration is denied.

16 Now, the motion for new trial based on spillover
17 prejudice, I also think that it's untimely, but the argument
18 for timeliness is better here than it is for the motion for
19 reconsideration. The problem -- the problem with this argument
20 is this. It ignores the fact that the defendant was convicted
21 of conspiracy to commit money laundering or money -- I should
22 call it money laundering conspiracy, which is the proper name,
23 proper reference to it, right?

24 The -- the simple fact is -- and I don't see an
25 argument to the contrary anywhere in the defendant's papers.

1 The evidence that allegedly created the spillover prejudice
2 that -- you know, Mr. Freeman dealing with the undercover, that
3 would have been admissible evidence for the money laundering
4 conspiracy and was admissible for that and there was no request
5 during the trial for a limiting instruction that should be
6 considered as to one -- like the substantive money laundering
7 count and no other counts or anything like that, including
8 money laundering conspiracy. This evidence was admissible.

9 So there's no prejudice. There's no prejudice
10 because even with -- even had that count, money laundering,
11 been dismissed pretrial, the evidence still would have been
12 part of the trial. There's no -- there's no spillover under
13 the applicable authority because the source of the spillover
14 would still have been part of the trial.

15 There's also the point that -- it's important to
16 remember why the Court -- why the Court dismissed the money
17 laundering count. It was that there was a failure -- a very
18 close failure, by the way, it was a very close call -- that
19 the -- that the government hadn't proven the required mens rea
20 or culpable mental state. But it wasn't the prejudicial -- the
21 so-called prejudicial aspect of that culpable mental state.

22 There were two culpable mental states involved in
23 this case. There was the general, sort of routine, requirement
24 to prove knowledge that a knowing transaction had occurred,
25 knowingly conducted a money laundering transaction. And

1 because there was no proof of actual knowledge that the
2 undercover transaction had been effectuated that was proven
3 with respect to Mr. Freeman, the Court vacated the jury verdict
4 and dismissed the count.

5 But there was plenty of evidence on the so-called
6 special mens rea, the knowledge of intent to conceal source of
7 funds. That was -- there was plenty of proof of knowledge of
8 that, if not -- if not willful blindness to that actual
9 knowledge.

10 And so that's the prejudicial aspect of it,
11 according to the motion for new trial, and there was no failure
12 of proof there and that evidence was coming in anyway.

13 So it's important not to -- not to confuse or
14 conflate the two types of culpable mental state that were
15 required to be proven for the money laundering count. The
16 failure was as to routine, general mens rea, not as to specific
17 mens rea regarding knowledge of intent to conceal source of the
18 funds. And that's an important consideration from the Court's
19 perspective.

20 Okay. So those motions are both denied.

21 Yes, sir.

22 OMR. GUERRIERO: Yes, your Honor. Thank you. Just
23 a couple of points.

24 I want to address the two things that -- the two
25 issues the Court said were not preserved --

1 THE COURT: Yeah.

2 MR. GUERRIERO: -- that you -- that the Court
3 described as new issues raised in the motion to reconsider.

4 With respect to the first one, I believe the Court
5 referred to the argument that FinCEN had adopted this language,
6 value substituting --

7 THE COURT: Yeah.

8 MR. GUERRIERO: -- that -- that was addressed on
9 page 12 of the original motion to dismiss. I just want to say
10 that for the record. I will sort it out on appeal, I'm sure.

11 THE COURT: Yup.

12 MR. GUERRIERO: And then our argument regarding
13 the -- whether or not it was possible to register without
14 following a regulation, that was not in the original motion to
15 dismiss, you're right, but it came up at the argument on the
16 motion to dismiss and my recollection is that I argued in
17 response to that that it was not possible to comply with the
18 statute without also following regulations.

19 So I believe that should be in the transcript of
20 that hearing is my recollection. If I'm wrong --

21 THE COURT: Well, you -- yeah, but you argued that
22 for DiMezzo.

23 MR. GUERRIERO: I did.

24 THE COURT: All right.

25 MR. GUERRIERO: And Mr. Freeman joined DiMezzo's

1 motion.

2 THE COURT: Is that how we ran that?

3 MR. SISTI: That's exactly what happened.

4 THE COURT: Okay. Understood.

5 MR. GUERRIERO: Thank you.

6 THE COURT: Anything you want to say about that?

7 MR. AFRAME: No, your Honor.

8 THE COURT: All right. Let's move to the
9 sentencing.

10 Mr. Freeman, in any criminal sentencing, the first
11 thing the Court has to do is determine what the U.S. Sentencing
12 Guidelines recommend for your sentence. And even if the
13 Court -- the Court's not bound by that recommendation. The
14 Court can give a sentence that is more lenient or more severe
15 than what the guidelines recommend. But as a rule in our
16 circuit, this district court of the country, the -- the trial
17 Court's required to figure out and find what the guidelines
18 recommend.

19 So there's two -- there's two parts of that effort.
20 One is just researching the guidelines, applying it to your
21 case, which I've been doing. The other one is reading this
22 report, this -- this presentence report. In your case, it is
23 32 pages long. It's written by Officer -- Probation Officer
24 Buckley, seated over there to your left, and he -- he wrote
25 that. And then in response to correspondence with your lawyer

1 and the lawyers for the government, Officer Buckley issued an
2 addendum.

3 Have you read both of those?

4 THE DEFENDANT: I have.

5 THE COURT: All right. Did you go over them both
6 with counsel?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you feel like you understand them?

9 THE DEFENDANT: Yup. I read them and I get it.

10 THE COURT: Okay. Any questions you want to ask me
11 about them?

12 THE DEFENDANT: No.

13 THE COURT: All right. Now, what generally
14 happens -- now, let me explain what's happened here.

15 Generally what happens is the parties file
16 objections with the probation officer where they disagree with
17 what's in the report, the first draft. And that's what the
18 addendum is; it addresses all those disagreements, objections,
19 and then the report's finalized and the parties file motions
20 with the Court where they disagree with the report.

21 In this case, your counsel didn't have any
22 objections to the report as -- well, had objections, just not
23 guideline-impacting objections, right? There were some --
24 there were definitely some objections to certain wording of the
25 report that they disagreed with, but their disagreements and

1 objections did not address your guideline score, the guideline
2 offense -- the guideline offense level.

3 The prosecution, though, did. They had objections
4 to, specifically, an adjustment under the guidelines for what's
5 called a vulnerable victim adjustment and the idea is that
6 the -- the offense level should be increased if victims of the
7 crime were particularly vulnerable. The prosecution says that
8 should apply in this case.

9 That's related to another issue in the case about
10 whether you should be ordered to pay restitution to victims.
11 Your lawyers didn't file anything about that because they
12 didn't object to the report. The report found -- the report
13 found that -- not that there were no victims, but that in the
14 way -- in the way that this case was charged and proven, the
15 Restitution Act didn't permit ordering restitution to victims.
16 The prosecution disagreed. They objected to the report and
17 they have filed papers with me to persuade.

18 I met with the lawyers before the hearing because my
19 view is that on this issue, the presentence report is incorrect
20 and the prosecution has the correct argument that, yes, you can
21 be ordered to pay restitution to victims, but there's still
22 proof that needs to be made to me to make that happen, which
23 victims, and how much. So there's that issue.

24 There's also -- so there's that issue and there's
25 also the issue of if the Restitution Act does permit or require

1 the payment of restitution to victims, does it trigger the
2 application of this guideline adjustment, additional levels for
3 vulnerable victimhood. Okay?

4 The prosecution has briefed that. Your lawyers
5 haven't. And your lawyers told me in chambers that given that
6 I'm inclined to agree with the prosecution on this issue,
7 they'd like an opportunity to brief that, file papers with me,
8 and of course I'm going to allow them to do that.

9 There's an argument that they should have done it
10 already, but the truth is you have conscientious lawyers, they
11 interpreted the procedure differently, obviously, because they
12 didn't file papers to that effect, and I want to give them that
13 opportunity. I don't want to sentence you on -- on that issue
14 without you getting the full stroke of the pump and me hearing
15 their legal arguments about, A, whether the victims here are
16 entitled to restitution and whether you can be ordered to pay
17 it and, if so, to whom and how much; and, B, whether that
18 triggers an adjustment upward in your guideline offense level.

19 Do you follow me?

20 THE DEFENDANT: Yup.

21 THE COURT: Okay. So that part of it won't happen
22 today, but we're going to conduct as much of the hearing as we
23 can because there's evidence that -- there's evidence that the
24 parties are prepared to present today that the Court will
25 consider as part of that and there's really no prejudice to

1 either side allowing the parties to present that evidence
2 today.

3 Do you follow me?

4 THE DEFENDANT: Okay.

5 THE COURT: All right. So tell me what you propose
6 to present today.

7 MR. AFRAME: So all we would -- I would like to
8 reserve making the actual argument on the sentence until we
9 know what the guideline range is.

10 THE COURT: Yes.

11 MR. AFRAME: So all I would like to do today is we
12 have two people present who, we believe, constitute victims in
13 the case that flew here from out of state and wish to read
14 letters to the Court; and we have one person similarly situated
15 who's available by Zoom and would also like to read her letter
16 to the Court. I propose that we do that today and then anyone
17 from -- these people could watch the actual sentencing by Zoom
18 at the later date that we hold it.

19 THE COURT: Or they could return.

20 MR. AFRAME: Or they could return. That's totally
21 up to them.

22 THE COURT: Yeah. So it's two live, one on Zoom.

23 MR. AFRAME: Correct.

24 THE COURT: Okay. Mr. Sisti, you're on your feet.

25 MR. SISTI: Thank you.

1 Just for preservation purposes, we don't consider
2 these individuals as victims and I want to make that clear
3 right now.

4 THE COURT: Understood.

5 MR. SISTI: Okay. Because we will be addressing
6 this whole issue within two weeks.

7 THE COURT: Yes.

8 MR. SISTI: Thank you.

9 THE COURT: And so your -- so you will file your
10 brief on the restitution issue and the vulnerable victim
11 adjustment by what date do you think that -- was it the 25th?

12 MR. GUERRIERO: (Nods head.)

13 THE COURT: 25th. Okay.

14 You may proceed.

15 MR. AFRAME: So I would invite Karen Miller to come
16 forward and read an impact statement to the Court.

17 THE COURT: Please.

18 So let me just be clear on this. You're presenting
19 this as a victim impact statement, not as -- not as restitution
20 evidence.

21 MR. AFRAME: Correct.

22 THE COURT: All right.

23 So you don't need to be sworn. I'm happy to listen.
24 Thank you.

25 MS. MILLER: Okay. In 2017, my husband and I

1 started remodeling a home in Florida that my daughter owns. We
2 were retiring and would be moving to Florida from Pennsylvania
3 when the house was ready.

4 Unfortunately, my husband died of a sudden heart
5 attack in 2018. We had been married 43 years. I decided to
6 continue the remodel and move to Florida to be near my daughter
7 and grandson.

8 I moved in June of 2019. Shortly after moving, I
9 realized I was going to -- wasn't going to see them very much.
10 They lived 40 miles away and my daughter worked full time. I
11 became very lonely.

12 In the fall of 2019, I joined a dating app online.
13 I registered as a widow. Soon after I joined, I was contacted
14 by a person calling himself Jerry Harmon of Raleigh,
15 North Carolina. From the picture I saw online, he looked very
16 handsome.

17 Shortly after communicating with him, he asked if I
18 would do a FaceTime. Of course I agreed. We only spoke for a
19 short period, but it was definitely the same person. We spoke
20 some days all through the night and some days all day long. He
21 was very romantic. I found myself falling in love with him.

22 He told me he was on an oil rig in the Gulf of
23 Mexico. He was the boss of his crew and was going to be
24 earning 20 million when the job was complete.

25 Soon he called me crying, he was actually crying,

1 saying he was done with the job but was going to be arrested
2 because he owed 9 percent tax on that 20 million. They would
3 not let him pay it out of his earnings.

4 I didn't hear from him for a few days, but when I
5 did, he was very sad, saying he was in jail. He asked if I
6 could send him some money to help. I ended up eventually
7 sending him all my money at that time, which was approximately
8 \$300,000.

9 He gave me a phone number and contact information
10 for Ian Freeman to send the money to. We would buy Bitcoin
11 from Ian Freeman and he would send it to a wallet that Jerry
12 Harmon designated.

13 At that time, I had no idea what he was talking
14 about. He explained to me to go to a certain location in
15 Florida that had a Bitcoin machine, put my money in, and give
16 him the wallet address. I did this not only with my own money,
17 but with others'. He said he was getting his employees' wives
18 and girlfriends to send money to help. He had them send it to
19 me and instructed me to send it to Ian Freeman. I had to send
20 Ian Freeman information that the money was coming.

21 This went on for about a year and a half. I ended
22 up not only giving him all my available cash, but went into
23 credit card debt of approximately \$20,000. Every time I
24 thought this was a scam, I remembered the FaceTime call and
25 told myself it must be real; it was him on FaceTime.

1 Eventually I received a call from Peggy Daley from
2 California. She started telling me, don't send Jerry any more
3 money as this is a huge scam. At the time I had -- I had been
4 starting to have doubts about it anyway, the whole
5 relationship. I finally believed her.

6 I now work part time. I was working at LegoLand. I
7 now am a cashier at Publix part time.

8 THE COURT: Where were you working originally?

9 MS. MILLER: LegoLand in Florida.

10 THE COURT: Yup.

11 MS. MILLER: Just to help day-to-day.

12 I'm paying \$475 a month to a debt consolidator to
13 pay off my credit cards. This is not the way I expected
14 retirement life to be.

15 There is one good thing that came from all of this.
16 I met Peggy Daley, Barbara Conniff, and Pam Hamilton, who have
17 all become very good friends. They are also victims. They
18 were also victim of Jerry Harmon and Ian Freeman.

19 Pam paid me to fly to Colorado to meet everyone. I
20 spent one week with all of them at Barbara's house. We were
21 there for each other. It really helped. We now call ourselves
22 the Goldless Girls.

23 We would like to go public and let everyone know how
24 easy it is to get scammed. I hope Ian Freeman can't do this to
25 anyone ever again.

1 Thank you.

2 THE COURT: Thank you, ma'am.

3 MR. AFRAME: I'd like to invite next Dannela Varel.

4 Ms. Varel was one of the witnesses at the trial.

5 THE COURT: I remember.

6 MS. VAREL: Good morning, your Honor.

7 THE COURT: Good morning.

8 MS. VAREL: How do you share with others the effect
9 this crime has had on you? How do you explain that your
10 fingers tremble on this keyboard just thinking of how you
11 believed you were being offered a lifetime of happiness when,
12 in fact, you were being lied to and duped into the theft of the
13 inheritance you received from your parents and your spouse.

14 How do you get past the guilt you have, the guilt
15 you feel for having lost all of the money they worked for their
16 whole lives? How do you explain that now you worry about how
17 much money it takes to feed your livestock and whether you will
18 have enough so that they can eat this month.

19 When I saw the ad for Valentine roses, my mind went
20 immediately to the last time I received roses. I felt loved
21 and appreciated, but in reality it was a ploy to gain my
22 confidence in a false relationship.

23 Now, whenever I see roses, I am reminded of what a
24 fool I was to believe that anyone as handsome and loving as I
25 believed Jerry Harmon to be could be interested in me when, in

1 fact, he was only interested in what I had and how he could
2 cause me to give it to him. To the end, he was only interested
3 in money and was angry on our final phone call when I wouldn't
4 give him more.

5 Why didn't I see the true motivation in his efforts,
6 the phone calls, the sweet talk, loving instant messages and
7 pleas to just take a leap of faith, Danni.

8 How do you regain the self-respect you once had?
9 How do you convey the fear as you drove home from Alexandria,
10 realizing that as long as -- at long last that you had been
11 scammed and that there was no one there to protect your home
12 from invasion by people who caused you to be absent? How do
13 you share the fear that you were scared someone was going to
14 shoot you if you went outside to check the animals when they
15 were in need?

16 I knew I had a moral obligation to testify, but at
17 what risk?

18 How do you begin to trust any decision you make or
19 relearn how to let someone genuinely valuable into your life so
20 that you could once again attempt the pursuit of a lasting
21 relationship?

22 I still can't tell my family how I've lost whatever
23 inheritance they might expect from me as I was so ashamed.
24 Rebuilding from Hurricane Ian would have been possible given
25 the funds I used to have available, but now I have to rely

1 totally on whatever the insurance company deems they will give
2 me. Will I have enough to replace the broken window in my
3 living room? How much will I get for the scrap metal that I've
4 collected from the ruins of the two barns destroyed by the
5 tornado? Will I have enough to repaint my tractor?

6 Every day this crime affects me, my animals, and
7 those I love who have no idea how deeply this crime has invaded
8 my life.

9 I really have no idea how the Court determines what
10 penalty is imposed, but I genuinely appreciate the fact that so
11 much effort was put forth to terminate this scam so that no
12 others will be affected as I was.

13 How do you fairly sentence one person for the havoc
14 that he has unleashed on so very many individual lives? He has
15 only one life, but all of us will pay for the rest of our
16 lives.

17 Thank you, your Honor.

18 THE COURT: Thank you.

19 MR. AFRAME: And the last letter today will be read
20 by Rebecca Viar. Ms. Viar was on our witness list, but --
21 actually came to New Hampshire but contracted COVID and,
22 therefore, she was unable to testify but would like to read a
23 letter now.

24 THE COURT: You mean at the trial?

25 MR. AFRAME: At the trial, yes.

1 Good morning, Ms. Viar.

2 MS. VIAR: Good morning.

3 MR. AFRAME: Go ahead. So you can read the letter
4 to the judge. He can see you on the screen.

5 MS. VIAR: Okay. Thank you.

6 Mr. Ian Freeman of Keene, New Hampshire, performed a
7 really good con job on myself and numerous other elderly
8 people. Our monies were taken illegally by Mr. Freeman and the
9 other individuals who aided him in this scheme of crimes.

10 As a result of Ian Freeman and his associates' theft
11 of our monies, my life and countless other lives have been
12 ruined both emotionally and financially.

13 I do not trust anyone anymore. I also have frequent
14 emotional breakdowns and crying spells. I have sought support
15 from my friends and church members as well as my doctor. I do
16 not interact freely with people I meet anymore.

17 Because of the emotional damage inflicted on me and
18 the other victims of Mr. Freeman's crimes, my ability to trust
19 others and also the other victims' abilities to trust has been
20 forever damaged. The pain I suffer emotionally will never go
21 away. It will be with me until I die.

22 When I was first approached by an individual on
23 Match.com, I was undergoing a really rough spot in my life. My
24 husband of 43 years had passed away on August the 1st, 2018. I
25 was lonely and vulnerable and I imagine that most of the other

1 victims were lonely, elderly people as well. I was led to
2 believe that the individual who contacted me was interested in
3 a romantic relationship with me. No one who cares anything
4 about people would have played on my emotions like that.

5 The last couple of years have been very difficult
6 for me. I could not believe that I was a victim of such a
7 scheme. I was also threatened by the person or persons that
8 were scamming all of us elderly people. The scammers told me
9 they knew where I was at all times and were tracking me in some
10 way.

11 I was and still am very frightened of these people.
12 I still wake up at night having nightmares and thinking someone
13 is chasing me and will find and kill me. I do not sleep well
14 at all and have not done so since this scheme all began.

15 Anyone like Mr. Ian Freeman who would do something
16 so emotionally damaging to every -- to elderly people is a
17 terrible, horrible person. I feel destroyed and ruined as a
18 person. How could another human being be so money hungry that
19 they would emotionally and financially destroy the lives of so
20 many vulnerable elderly people?

21 Mr. Ian Freeman was the planner and instigator of
22 this entire scam. Mr. Ian Freeman is an ugly-hearted person
23 and obviously has an ugly soul. His actions against all his
24 victims show that he is a horrible person who deserves to
25 suffer immensely for his actions.

1 I would like to request from the Court that you
2 sentence him to the maximum sentence possible for his crimes
3 against unsuspecting, vulnerable, and innocent people that he
4 chose to make the victims of his scams. I suffer every day
5 because of his actions and I'm certain that all the other
6 elderly people he scammed suffer daily as well.

7 How could Ian Freeman be so callous as to treat all
8 of these elderly people like garbage and claim to be religious?
9 Please, please, please, I beg you to allow him to suffer the
10 consequences of his scams against so many vulnerable elderly
11 people.

12 Like the other victims, I ended up giving all the
13 available cash and money that I had to these people. Insurance
14 money, three loans that they got me to take out, ended up
15 selling my husband's truck and sent them the money from that.
16 In other words, I really lost my life. As I knew it once, it
17 is no longer.

18 Thank you very much.

19 MR. AFRAME: Thank you, Ms. Viar.

20 THE COURT: All right.

21 MR. AFRAME: Your Honor, we do not have any
22 additional statements to read today.

23 THE COURT: I have a couple of questions for you,
24 though. Just give me some context.

25 Kellie, can you grab the white binder that's on the

1 table in the room out back?

2 THE CLERK: Yes.

3 THE COURT: The first two women we heard from who
4 were -- today in the courtroom --

5 MR. AFRAME: Yes.

6 THE COURT: -- they were both involved with
7 Mr. Harmon?

8 MR. AFRAME: Correct.

9 THE COURT: Was the last -- was the last -- I want
10 to say witness -- I guess the last one we heard from, was that
11 also a Harmon situation?

12 MS. VAREL: Yes.

13 MR. AFRAME: No, his name was -- there was a
14 different -- I think the names -- I mean, these aren't real
15 names, so when I say that, it doesn't mean anything.

16 THE COURT: Yeah.

17 MR. AFRAME: But that was not the name.

18 The name of the person who offered her the romantic
19 relationship was not Harmon.

20 THE COURT: Not reported to be Harmon.

21 MR. AFRAME: Right.

22 MS. VAREL: Seth, it was.

23 MR. AFRAME: For her? I thought it was Mr. Flowers.

24 THE COURT: I know it was purportedly Harmon for the
25 two who testified here today or who spoke today, but --

1 MR. AFRAME: No. So for the -- for Ms. Varel and
2 Ms. Miller --

3 THE COURT: Yeah.

4 MR. AFRAME: -- it was Mr. Harmon.

5 Rebecca Viar, the name she provided us was a -- was
6 a name of a Michael Glen Wilson.

7 THE COURT: Rebecca Biar (sic), that's not Rebecca
8 Ault?

9 MR. AFRAME: That's a different person.

10 THE COURT: All right. So where's --

11 MR. AFRAME: Rebecca Viar is at --

12 MS. MACDONALD: Under Viar.

13 MR. AFRAME: Viar.

14 THE COURT: Oh, Viar.

15 MR. AFRAME: They're alphabetical.

16 THE COURT: I thought it was a B. I've got it now.

17 MR. AFRAME: I'm sorry. V.

18 THE COURT: Okay. I just want to take a quick look.

19 MS. MACDONALD: Page 2 of the FBI, 302. RMV --

20 THE COURT: RMV -- yeah.

21 MS. MACDONALD: 3. RMV3 on the second page says her
22 name.

23 THE COURT: RMV3.

24 MS. MACDONALD: Yup. Page 2, the first full
25 paragraph.

1 THE COURT: Okay. So there is a connection with
2 Ms. -- with Ms. Varel here.

3 MR. AFRAME: Yes. So that would be that -- so,
4 again, like we -- we're not behind the underlying scams, but
5 what did happen --

6 THE COURT: We're not what?

7 MR. AFRAME: We don't know exactly -- these people
8 using these names, we can't tell you for certain who they are.

9 What we do know is at one point, Varel was asked to
10 send money to Viar to send to Freeman and there was evidence of
11 this at the trial. We called them third-party --

12 THE COURT: Yup.

13 MR. AFRAME: It's money muling.

14 So is there -- could there be a connection between
15 so-called Wilson and so-called Harmon? Absolutely.

16 THE COURT: Well, it would seem to me that, you
17 know, commonality of wallets, for lack of a better way of
18 putting it, would be important consideration in understanding
19 all this from a restitution perspective.

20 Okay. Thank you.

21 All right. Look. So does either party want to be
22 heard on anything else before we do -- before we move to this
23 briefing on restitution and the vulnerable victim adjustment?

24 MR. SISTI: No, your Honor.

25 MR. AFRAME: No, I don't -- I don't think so,

1 because I think what happens next depends on what the guideline
2 calculation --

3 THE COURT: Yeah, me too. Me too. All right.

4 Well, let -- we accomplished less than we wanted to
5 today and I guess what I want to do is I want to acknowledge
6 the Court's role in this delay. Because I think it would be
7 better if we had had briefing from both sides on this issue and
8 it didn't really occur to me until the last few days that the
9 defendants had basically chosen not to engage on this
10 particular issue because they concurred with the presentence
11 report and probably didn't feel a need to.

12 But had I realized that earlier, I probably would
13 have ordered briefing so we could have finished the job today
14 that we meant to start and I just want to acknowledge the
15 Court's role in that because I'm not happy about it, with my
16 own performance on that particular issue.

17 Okay. Then what we have then is a schedule. We're
18 going to -- by two weeks from today, we're going to have the
19 defendant's briefing on the Restitution Act issue and the
20 vulnerable victim adjustment.

21 Then we're going to have a couple of weeks from that
22 an addendum likely -- if I find the -- the -- if I find that
23 restitution is warranted under the law, then we're going to
24 have an amendment to the presentence report analyzing this
25 alleged victim by alleged victim, vis-a-vis entitlement to

1 restitution and amount, which the parties are going to have a
2 chance to react to.

3 So we can't set the next date yet and I'm not sure
4 what else we can accomplish today.

5 Did you want to say something?

6 MR. AFRAME: No. So -- just so I make sure I
7 understand.

8 So there will be briefing in two weeks by the
9 defense --

10 THE COURT: Yup.

11 MR. AFRAME: -- we'll have a sentencing hearing that
12 will happen on October 2nd; and then following that, probation
13 will issue --

14 THE COURT: Yeah.

15 MR. AFRAME: -- if the Court orders restitution --

16 THE COURT: Yeah.

17 MR. AFRAME: -- as a legal matter, probation will
18 file a report with its -- with its view of who should get
19 restitution and we will litigate that at a date to be decided.

20 THE COURT: Yeah.

21 Now, look, to the extent it helps any briefing, let
22 me be -- let me explain my inclination here.

23 There's an argument -- the presentence report took
24 the -- took the position that the Restitution Act does not
25 allow for restitution to these individuals and the prosecution

1 briefed -- briefed based on its position that it does.

2 This is not a situation -- this -- and this is based
3 on the money laundering aspect of this.

4 This is not a situation that involves what is much
5 more frequently seen in laundering cases where the perpetrator
6 of a crime -- in this case it would be whoever would be
7 purporting to be, you know, Jerry Harmon or someone like him --
8 accepts funds and then delivers the funds to someone through a
9 transaction by which the funds are washed, laundered, whatever.

10 This isn't like taking drug money or even fraud
11 money and -- that's been procured from a victim and then
12 handing it to a defendant like Mr. Freeman to conduct
13 transactions that washes the money. If that were the case, it
14 would be a much more difficult analysis, I think, to determine
15 whether restitution is allowed.

16 But in this case, Mr. -- the -- the Bitcoin
17 purchases that were made from Mr. Freeman and the proceeds of
18 which were transmitted to Bitcoin wallets is a little
19 different. Those transactions conveyed the purported victims'
20 money from the victims to the perpetrator.

21 So they were -- they were laundering transactions
22 that were very much part and parcel of the actual defrauding
23 conduct, the -- the obtaining of money from victims and
24 transmitting it to perpetrators. And there was a commission
25 involved, of course.

1 But that, to me, makes it a much easier analysis
2 and really requires a finding that restitution here is -- or
3 because the causation element of the two-part test is
4 satisfied.

5 That said, I've drawn that preliminary conclusion --
6 I haven't reached the conclusion, it's a preliminary conclusion
7 without having -- I've read the probation officer's position
8 and I've read the prosecution's position, but the defendant
9 didn't brief it because the defendant agreed with the
10 presentence report. And why wouldn't he? It would have meant
11 a more lenient sentence. But I don't think that -- I don't
12 think that conclusion is likely supported by the law.

13 So I -- in order to make sure the defendant's been
14 heard on this fully, he has two weeks to brief the issue and
15 then the -- the related corollary issue about the applicability
16 of the vulnerable victim requirement.

17 It's the Court's position that based on what I have
18 read that probably applies as well and that results in a higher
19 guideline total offense level and, therefore, a higher
20 guideline sentencing range. So it's important information.

21 Okay then. So you've got the schedule. We will --
22 yes, sir.

23 MR. GUERRIERO: Yes, your Honor.

24 Just to mention it in the context of this
25 discussion, the way I understand it is that the Court will

1 decide on October 2nd whether restitution is due and also
2 whether there will be a forfeiture and then we'll have a later
3 hearing on those amounts. You didn't mention the forfeiture
4 and the restitution effects of the forfeiture, so I wanted to
5 make sure I was clear on the schedule.

6 THE COURT: I guess to the extent -- yeah, whether
7 there will be a forfeiture, I guess we can decide it that day,
8 sure.

9 MR. GUERRIERO: Okay.

10 THE COURT: Yeah.

11 MR. GUERRIERO: All right. I just wanted to --

12 THE COURT: You're right, it's related to
13 restitution or restitution is a factor in that analysis. And
14 the -- the -- the knowledge of whether that factor will apply
15 is important information. I would assume there will be some
16 forfeiture in this case.

17 MR. GUERRIERO: Okay.

18 THE COURT: Okay?

19 We are adjourned for now.

20 THE CLERK: All rise.

21 (Proceedings adjourned at 11:44 a.m.)
22
23
24
25

C E R T I F I C A T E

I, Liza W. Dubois, do hereby certify that
the foregoing transcript is a true and accurate transcription
of the within proceedings, to the best of my knowledge, skill,
ability and belief.

Submitted: 11/15/23

/s/ Liza W. Dubois
LIZA W. DUBOIS, RMR, CRR